

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP

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Date:

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### Legend

Distributing =

Controlled =

Country A =

Year 1 =

Shareholder A =

Shareholder B =

X =

Y =

Z =

Date 1 =

Business 1 =

Business 2 =

A =

Dear :

This letter responds to your representative's letter dated October 27, 2008, requesting rulings as to the Federal income tax consequences of a transaction. Additional information was submitted by letters dated January 21, 2009 and March 3, 2009. The material information submitted for consideration is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the proposed transaction: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code (the "Code") and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

## SUMMARY OF FACTS

Distributing is a Country A Corporation that was established during Year 1. Distributing's stock is owned X% by Shareholder A and Y% by Shareholder B. The remaining Z% of Distributing's stock is owned by the public.

Controlled is a Country A Corporation that was incorporated on Date 1. Controlled is wholly owned by Distributing.

Distributing is engaged in Business 1 and Business 2. Distributing has submitted financial information which indicates that each of Business 1 and Business 2 has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

## TRANSACTION

For what are represented as valid business reasons and in order to take advantage of Country A tax incentives available under Country A tax law, Distributing entered into the following transactions (collectively, the “Transaction”):

- (i) Distributing underwent a tax free Demerger under Country A law. Distributing transferred the assets and liabilities relating to Business 1 to Controlled (“the Contribution”).
- (ii) In addition, as part of the Demerger transaction, Controlled issued and allotted new fully-paid equity shares to Shareholder A and Shareholder B in proportion to their shareholdings in Distributing (the “Distribution”). Shareholder A received X% of shares of Controlled. Shareholder B received Y% of the shares of Controlled.
- (iii) After the Demerger, pursuant to a plan agreed upon before the Demerger in which the rights of the parties are defined, Shareholder A will exchange the Controlled shares it received in the Distribution for the Distributing shares owned by Shareholder B (the “Share Exchanges”).
- (iv) Following the Contribution, the Distribution, and the Share Exchanges, Shareholder A will own A% of Distributing and Shareholder B will own A% of Controlled. Distributing will be directly engaged in Business 2 and Controlled will be directly engaged in Business 1.

## REPRESENTATIONS

The taxpayer has made the following representations concerning the Transaction:

- (a) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee or in any capacity other than that of a Distributing shareholder.
- (b) The five years of financial information submitted concerning each of Business 1 and Business 2 represents its present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.
- (c) Neither Business 1 or Business 2, nor control of an entity conducting these businesses will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.

- (d) Following the Transaction, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.
- (e) The Distribution is carried out for the following corporate business purposes: (1) the full integration of Business 1 with a related business; (2) a separation of the management of Business 1 and Business 2, so as to enable each respective management to focus on one of the Businesses; (3) the separation of capital expenditures and cash flows of Business 1 and Business 2; and (4) an institution of different dividend policies dependent on profitability and cash flow of each of Business 1 and Business 2.
- (f) The Transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (g) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (h) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution, or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (i) The total adjusted bases of the assets to be transferred to Controlled by Distributing in the Transaction will equal or exceed the sum of the total liabilities assumed (within the meaning of § 357(d)) by Controlled.
- (j) The liabilities to be assumed (as determined under § 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- (k) The total fair market value of the assets transferred to Controlled in the Transaction will exceed the sum of (i) the amount of any liabilities assumed

(within the meaning of § 357(d)) by Controlled in the exchange, and (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

- (l) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Transaction.
- (m) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to the Distribution.
- (n) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (o) No two parties to the Transaction are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (p) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (q) Immediately after the Transaction (as defined in § 355(g)(4)), neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (r) Neither Distributing nor Controlled will be a controlled foreign corporation (within the meaning of § 957(a)) or a passive foreign investment company (within the meaning of § 1297(a)) immediately before or after the distribution.

#### RULINGS

Based solely on information submitted and the representations set forth above, we rule as follows:

- (1) For Federal income tax purposes, the Demerger will be treated as if Distributing transferred the assets associated with Business 1 to Controlled in exchange for all the stock of Controlled and the assumption by Controlled of the liabilities associated with Business 1, followed immediately by a distribution of all of the Controlled stock to the shareholders of Distributing. The Contribution followed by the Distribution will constitute a reorganization within the meaning of

- § 368(a)(1)(D). Distributing and Controlled each will be “a party to a reorganization” within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Distributing upon the Contribution. Sections 361(a) and 357(a).
  - (3) No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).
  - (4) The basis of each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately prior to its transfer. Section 362(b).
  - (5) The holding period for each asset received by Controlled from Distributing will include the period during which Distributing held the asset. Section 1223(2).
  - (6) No gain or loss will be recognized by Distributing on the Distribution. Section 361(c).
  - (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Shareholders A and Shareholder B upon their receipt of the Controlled stock. Section 355(a).
  - (8) The aggregate basis of the Controlled stock and the Distributing stock in the hands of Shareholder A and Shareholder B will equal the basis of the Distributing stock held by Shareholder A and Shareholder B immediately prior to the Distribution, allocated between the Distribution stock and the Controlled stock in proportion to fair market value of the Distributing and Controlled stock after the Distribution. Section 358(a)(1), 358(b)(2).
  - (9) The holding period of the Controlled stock received by Shareholder A and Shareholder B will, in each instance, include the holding period of the Distributing stock held by each respective shareholder, provided that each respective shareholder held the Distributing stock as a capital asset on the date of the Distribution. Section 1223(1).
  - (10) Proper allocation of Distributing's earnings and profits will be made under §§ 312(h) and 1.312-10(a).

#### CAVEATS

No opinion is expressed about the tax treatment of the Transaction described above under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Transaction that is not specifically

covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Transaction satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the Transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether the Transaction is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

#### PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lisa A. Fuller  
Senior Counsel, Branch 1  
Office of Associate Chief Counsel (Corporate)